

ORIGINAL

OPEN MEETING AGENDA ITEM



0000103879

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 OCT 14 P 2:45

RECEIVED
COURT REPORTER
JULIE COOPER

IN THE MATTER OF THE SALE AND
TRANSITION BY ARIZONA PUBLIC SERVICE
TO ELECTRICAL DISTRICT NO. 3 OF
CERTAIN ELECTRICAL FACILITIES IN PINAL
COUNTY PURSUANT TO A.R.S. 40-285(A)
AND FOR DELETION FROM ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY CERTAIN AREAS OF PINAL
COUNTY

DOCKET NO. E-01345A-08-0426

MOTION TO REOPEN RECORD

1 Pinal Energy LLC ("Pinal Energy") hereby moves to reopen the record in this case for
2 the purpose of taking important additional evidence. In support of its motion, Pinal Energy
3 states as follows:

4 **I Pinal Energy**

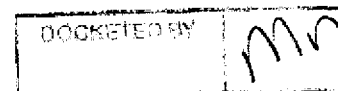
5 Pinal Energy owns and operates the first ethanol production facility to be built in
6 Arizona. The facility began production in August 2007. The plant plays an important role in
7 improving Arizona's air quality, provides 45 jobs for the Maricopa area, and, most importantly,
8 makes a local source of ethanol available.

9 Pinal Energy's annual ethanol production rate is 50 million gallons from roughly 18
10 million bushels of corn or milo acquired from both local producers as well as from the Midwest.
11 The fuel-grade ethanol is used in blending with gasoline components to produce E10, a 10%
12 ethanol blend. The ethanol produced at the plant is also used for the blending of E85, a clean-
13 burning blend of 85% ethanol and 15% gasoline for use in flex-fuel vehicles.

Arizona Corporation Commission

DOCKETED

OCT 14 2009



1 Production of ethanol results in two other commercially viable by-products: distiller's
2 grain and CO₂. Distiller's grain is a feed utilized by dairies and feedlots. The CO₂ produced is in
3 the form of both liquid and dry ice.

4 Pinal Energy is located within the service territory of Electric District No. 3 ("ED3").
5 Ethanol production consumes large amounts of electricity. Pinal Energy's demand, including
6 that used for onsite CO₂ production, averages approximately 8.0 MW. Pinal Energy believes
7 that it is ED3's largest electricity customer, by a significant margin.

8 Pinal Energy's electricity rates have risen sharply since APS and ED3 announced their
9 proposed CC&N transfer. In February 2008, as an apparent part of the proposed transfer, APS
10 and ED3 cancelled their old power purchase agreement and entered into a new power contract,
11 whereby APS will supply ED3's electricity requirements for five years at a rate sharply higher
12 than previously paid by ED3. As a result, Pinal Energy's average power price has increased
13 from \$0.646/kWh in March 2008 to \$0.934 in August 2009, a 45% rate increase in 17 months.

14 Rates for Pinal Energy are now substantially higher than if it were an APS customer.
15 Further, this massive rate increase threatens the future viability of Pinal Energy.

16 **II Public Interest**

17 Reopening of the record is in the public interest for several reasons:

- 18 1. As part of its evaluation of the proposed transfer, the Commission did not consider
19 whether APS received additional consideration from ED3 in the form of higher power
20 revenue and profits as a result of the new APS Power Contract (No. 89695).

21 Additional evidence is needed to evaluate (i) why ED3 agreed to a new power-supply
22 agreement at the same time it sought to purchase APS assets and acquire APS
23 customers; and (ii) whether the new agreement motivated APS to make these sales
24 and transfer its jurisdictional customers.

- 25 2. Pinal Energy can provide detailed information about the effect of the new APS Power
26 Contract on its monthly bills and its future viability. It would not be in the public
27 interest if the new APS Power Contract drove one of Arizona's most important green

1 energy producers out of business.¹ Additional evidence is needed to evaluate the
2 effect of the new APS Power Contract on ED3's largest customer and other large
3 customers.

- 4 3. Pinal Energy is informed and believes that the rates charged ED3 under the new APS
5 Power Contract were set at the peak of the electric market and are now well above
6 market rates. Pinal Energy is also informed and believes that APS has refused to
7 renegotiate the contract rate. Additional evidence is needed concerning the prudence
8 of the agreement and APS' unwillingness to renegotiate its terms.
- 9 4. Based on its effect on Pinal Energy, the new APS Power Contract is also likely
10 driving up residential and other electrical rates to levels well beyond existing and
11 proposed retails rates for APS' own customers. This would adversely affect those
12 present APS customers that would be transferred to ED3. Additional evidence is
13 needed concerning the current and expected rate impact of the new APS Power
14 Contract on all of ED3's current customers and all of those that would be transferred
15 from APS.
- 16 5. Since the application was filed, the real-estate market in the ED3 service territory (the
17 City of Maricopa and environs) has drastically turned for the worst. Based on data
18 from Arizona State University, in the second quarter of 2008, there were 530 new
19 home sales at an average price of \$162,345. For the second quarter of 2009, the
20 numbers plummeted to 365 homes at an average price of \$121,030. For those same
21 periods, foreclosures increased from 140 to 555. What this means is that ED3's
22 electricity sales may actually be declining at the same time that its electricity rates are
23 escalating. If the potential loss of Pinal Energy's load due to higher rates is also
24 factored in, ED3 may face extreme financial difficulties. The most recent financial

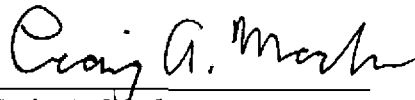
¹ APS and ED3 may argue that the wholesale power agreement is not within the Commission's jurisdiction. However, if the agreement was part of the entire transaction (as it appears to be) and it hurts Arizona businesses, then it would not be in the public interest for the Commission to approve any part of the transaction, including the customer transfer.

1 date provided in the docket was for the year 2007. Additional evidence is needed to
2 allow the Commission to evaluate ED3's present financial health and determine
3 whether it would be prudent to transfer APS' customers to what may be a financially
4 troubled utility.

5 **III Requested Relief**

6 Pinal Energy asks the Commission to reopen the record to take additional evidence
7 concerning whether the proposed transaction is in the public interest.

8 RESPECTFULLY SUBMITTED on October 14, 2009.

9
10 
11

12 Craig A. Marks
13 Craig A. Marks, PLC
14 10645 N. Tatum Blvd., Ste. 200-676
15 Phoenix, Arizona 85028
16 (480) 367-1956 (Direct)
17 (480) 367-1956 (Fax)
18 Craig.Marks@azbar.org
19 Attorney for Pinal Energy, LLC
20
21

22 **Original** and 13 copies **filed**
23 on October 14, 2009, with:

24
25 Docket Control
26 Arizona Corporation Commission
27 1200 West Washington
28 Phoenix, Arizona 85007
29

30 **Copy** of the foregoing **mailed**
31 on October 14, 2009, to:

32
33 Jane Rodda, Administrative Law Judge
34 Hearing Division
35 Arizona Corporation Commission
36 400 W. Congress St.
37 Tucson, Arizona 85701-1347
38

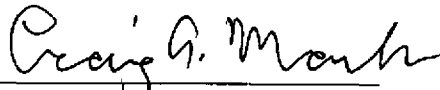
1 Janice Alward, Chief Counsel
2 Legal Division
3 Arizona Corporation Commission
4 1200 W. Washington Street
5 Phoenix, Arizona 85007
6

7 Steve Olea, Director
8 Utilities Division
9 Arizona Corporation Commission
10 1200 W. Washington Street
11 Phoenix, Arizona 85007
12

13 Thomas L. Mumaw
14 Meghan H. Grabel
15 Arizona Public Service Company
16 P.O. Box 53999
17 Phoenix, Arizona 85072-3999
18

19 Paul R. Orme
20 Law Offices of Paul R. Orme, P.C.
21 H.C. 63, Box 3042
22 Mayer, Arizona 86333-9702
23

24 Paul M. Breakman
25 John P. Coyle
26 Duncan & Allen
27 1575 Eye Street, NW, Suite 300
28 Washington, DC 20005-1105
29

30 By: 
31 Craig A. Marks
32